

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 26

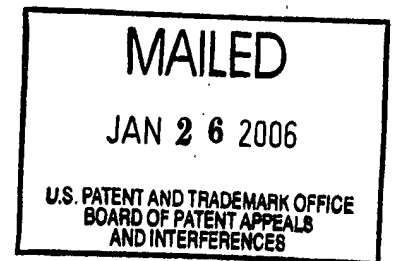
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEPHEN MICHAEL REUNING

Appeal No. 2004-1714
Application No. 09/897,826

ON BRIEF



Before HAIRSTON, KRASS, and NAPPI, Administrative Patent Judges.
HAIRSTON, Administrative Patent Judge.

ORDER TO VACATE DECISION
AND
ORDER TO DISMISS APPEAL

In a decision dated September 30, 2004, the Board affirmed the 35 U.S.C. § 102(e) rejection of claims 1 through 19 based upon the teachings of the patent to McGovern. In response to a October 21, 2005 request for rehearing, the Board informed appellant on November 30, 2005 that the request for rehearing had been granted to the extent that our decision had been reconsidered, but that such request was denied with respect to making any modifications to the decision. Prior to the November 30, 2005 mailing date of our response to the request for

Appeal No. 2004-1714
Application No. 09/897,826

rehearing, counsel for appellant filed on November 7, 2005, among other documents, a Request for Continued Examination (RCE) under 37 CFR § 1.114.


According to the notice entitled "Request for Continued Examination Practice and Changes to Provisional Application Practice," 65 Fed. Reg. 50092, 50095 (Aug. 16, 2000) and the provisions of 37 CFR § 1.114(d), a request for continued examination under 37 CFR § 1.114 filed after appeal has been taken, but prior to a decision on the appeal, "will be treated as a request to withdraw the appeal and to reopen prosecution of the application before the examiner." Inasmuch as the November 7, 2005 filing date of the RCE is prior to our November 30, 2005 response to the request for rehearing, we hereby find that the Board did not make a proper final "decision on the appeal," and that the RCE is a proper "request to withdraw the appeal and to reopen prosecution of the application before the examiner."

Accordingly, our premature decision in this application is vacated, and the appeal in this application is dismissed in favor of the RCE.

The application is being returned to the examiner for any further action as may be appropriate.

ORDER TO VACATE DECISION
AND
ORDER TO DISMISS APPEAL

KENNETH W. HAIRSTON
Administrative Patent Judge


ERROL A. KRASS
Administrative Patent Judge

BOARD OF PATENT
APPEALS
AND INTERFERENCES


ROBERT E. NAPPI
Administrative Patent Judge

3

Appeal No. 2004-1714
Application No. 09/897,826

PHARMACEUTICAL PATENT ATTORNEY, L.L.C.
55 MADISON AVENUE
4TH FLOOR
MORRISTOWN, NJ 07960-7397